

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 891 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

YASINBHAI AHMEDBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR.HL JANI, AGP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 6-1-1998 passed by the Commissioner of Police, Ahmedabad under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on the four criminal cases registered against the petitioner for the offences punishable under Sections 379, 447, 411, 114, 454, 457, 380 and 411 of the IPC registered at Vatva Police Station in respect of which, as can be seen from the grounds of detention, the investigation is going on. Besides the said criminal cases, further reliance is also placed by the detaining authority on the statements of four witnesses for the incidents which took place on 15-11-97 and 13-12-1997.

With regard to the incident of 15-11-1997 it is alleged that the petitioner and his associates tried to sell cloth to the witness and when the witness refused to purchase the same without bills, the witness was dragged from his shop to the public road and was beaten. It is also alleged that the petitioner had forcibly taken Rs.2500 from the counter of the shop of the witness. When the people gathered to watch the incident, the petitioner rushed to wards the crowd with knife with the result they started running and an atmosphere of terror was created.

With regard to the incident of 13-12-1997, it is alleged that the petitioner and his associate came to the house of the witness and asked him to allow them to store stolen cloth-bale in the house of the witness and on being refused to allow them to do so, the witness was dragged from his house and brought on the public road and was beaten. On this occasion also when the people gathered, the petitioner rushed towards them with Gupti and an atmosphere of terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

Having heard Mr.H.L.Jani, learned Assistant Government Pleader at length, and having gone through the statements of the witnesses, I am of the view that the detaining authority has clearly failed to note the difference between the breach of law and order and breach of public order. Assuming for the sake of argument that the involvement of the petitioner in the incidents

alleged against him by the witnesses is true, in that case also the same at best can be construed as breach of law and order and by no stretch of imagination they can be construed as breach of public order. These are all individual cases with which the public at large is not concerned at all. Not only that, the statements of the witnesses are stereo-type statements and they are vague and general in nature. Thus, the subjective satisfaction arrived at by the detaining authority on the basis of the aforesaid material for branding the petitioner as a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting any manner prejudicial to the maintenance of public order is not genuine. Consequently, therefore, the order of detention is also liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 6-1-98 is quashed and set aside. The detenu Yashinbhai Ahmedbhai Shaikh is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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